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EDITED BY GEORGE BRYAN

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The General Assembly of 1904.

The General Assembly of 1904 adjourned *sine die* on the 15th instant. We have been able thus far to learn of its acts and deeds only through the daily press, and, therefore, vaguely. But we repeat what we said in January—let us have peace for two years—quiet—opportunity to ascertain what is our statute law. Personally we confess to a bewildered feeling, and if we should be confronted with the bold assertion that for instance Lord Campbell's Act, or the statute making the testimony of one of two parties to a contract or transaction incompetent after the death of the other, had been repealed, we should hesitate to contradict it. We have no idea that such is the case, for we have confidence in the sound judgment of the General Assembly, and this could have been done only by inadvertence. But where at least four months work is done in sixty days—where upon the hearing in committee of questions of first importance, the chairman states courteously but positively that there are other pressing demands upon the committee's time and that only a half hour can be given to the advocates and opponents of the measure—the wonder is rather that more errors by inadvertence are not committed. On December 10, 1903, an act was approved amending section 3139 of the Code, relating to juries, as it had been amended by an Act of May 5, 1903, and an Act of July 28, 1902. But technical, and, it was found, vital defects existed in the December Act, and a further amendment was offered, which we have no reason to doubt was passed, making *four amendments in twenty months.* We do not doubt that the members of the General Assembly did their work faithfully—but now the present effort will be to find out what they did.

The Torrens System.

We are called upon to record the temporary defeat in the House of Delegates of Virginia of House Bill No. 94, providing for the inauguration in this State of the Torrens System of Land Registration. It was only technically a defeat, for substantially it was a victory—the vote being forty-seven against to forty-one for. That a measure of the novelty and importance of this should upon its first consideration in the popular branch of our legislature develop such strength that a change of only four votes would have effected its passage, cannot but prove a source of encouragement to the friends of the bill. It was under debate for more than three days and its alleged merits and demerits were fully discussed. On the last day of the debate an amendment was offered by its patron, Hon. R. S. Blackburn Smith, of Clarke county, limiting its operation to certain specified cities and counties, whose representatives desired it. This was unquestionably a sound suggestion, founded upon the doctrine of home rule and local self-government, and excepting from the dreaded "evils" of the bill the large majority of the counties of the State. At the same time it was a good parliamentary move, bringing to the support of the measure several who had opposed it as a general law. We do not doubt that the opposition to the bill was as sincere as was its support, but we believe that time and discussion will familiarize our representatives with its real features and that they will be glad to give the benefits of the legislation to such portions of the State as may desire the system. Once installed, it is believed that it will be its own strongest advocate—that its merits will be made manifest by practical operation, and that there will be gradually but surely a demand for its application to other counties. Upon the whole, we feel justified in tendering to the advocates of the bill our congratulations upon what was in reality their success. Fruit like this ripens not nearly so rapidly as do appropriations to expositions and similar objects, and for the very good reason that it does not enjoy the aid of so many enthusiastic gardeners. But it ripens, nevertheless, from the mere force of the sunshine of popular demand for improved methods, and in good time we shall reap from it more benefit than many expositions can confer upon us.

The General Assembly which has just adjourned passed an act in regard to change of venue which seems to us *brutum fulmen.* In an emergency due to a particularly exasperating crime at Roanoke and the necessity for the prompt trial of the accused, it attempted to amend section 4036 of the Code, providing when and how the venue may be changed, by a provision permitting the change to be made by the judge of the court in vacation, upon petition of the accused and in his absence. The framers of the amendment, however, seemed to have overlooked entirely the ruling in *Wright's Case,* 33 Gratt. 879, to the effect that the accused, before he can obtain a change of venue, must first have moved in open court for a jury from another county, and this not having been done and an impartial jury having been in fact obtained, the appellate court will not reverse. This was followed in *Joyce's Case,* 78 Va. 289; *Waller's Case,* 84 Va. 492, and in *A. & D. Ry. Co.* v. *Reiger,* 95 Va. 418.

Change of Venue. No Change.

Manifestly the amendment of February 15th, 1904, makes no real change in the law, for while it does not so provide, the accused must still, under *Wright's Case,* move in person for another jury before he can have his petition for a change considered, much less granted. The truth is that *Wright's Case* is about as pronounced a piece of judicial legislation as can be found in a day's reading. The opinion is unsatisfactory—being in substance that because a competent jury had been obtained—that is, one that had agreed upon a verdict of conviction—"the *conclusive presumption* is that there was no ground for any such objection." And the court thereupon proceeds to rule that the absolute statute must be qualified in such a manner as in large measure to make it meaningless. Concerning the other cases cited above, it need only be said that they follow *Wright's Case* as a rule of practice, none of them going into the merits of the question. An amendment was suggested to the Act of February 15th, 1904, which met and overruled *Wright's Case,* but, the particular emergency having passed, the consideration of the subject was postponed for other and doubtless more important business.

Judicial Ethics.

The differing views of judicial propriety are well illustrated in two cases that have been recently reported. In New York, it was held to be no objection that a judge had entered a decree in a suit which his firm had instituted, he having been elected to the bench immediately after its institution, the ruling going off upon the point that he had no personal knowledge of it, his partners having sued out the writ, but signing the firm name to the process. In *Winters* v. *Coons,* 69 N. E. 458, the Supreme Court of Indiana took an entirely different view of the question, holding that where one who had been an attorney for an appellant in the trial of a cause afterwards became judge, a bill of exceptions settled and signed by him without the knowledge or consent of the appellee is not a part of the record. Said the court, considering the maxim *"Nemo in sua propria causa debet esse judex":*

"The principle affirmed by this maxim is not confined alone to a case in which the judge is directly a party, but extends to and applies to a cause in which he can be said to have a personal interest. In the application of the principle asserted by the maxim in controversy in respect to the point herein involved, the question to be determined is not whether the judge who settled and signed the bill of exceptions was influenced in any manner by reason of his having been of counsel in the case (and we do not wish to be understood as intimating that he was in any manner unfairly or otherwise influenced in his action), but the purpose of the principle as affirmed is that a judge in the discharge of his judicial functions shall not be placed in a position where he may be subjected to imputation that he labored under the influence of his own interest in the matter. We conclude that under the circumstances the evidence cannot be regarded as properly before us, hence no question depending thereon can be reviewed."

There can be no question of the correctness of this position. We are to guard not only against evil, but the appearance of evil.

While we are on the subject, we may express the hope that at no distant day provision will be made in Virginia for compensation to all judges in such a sum as to justify a statute flatly forbidding them to practise law. A great step was made to this end by the abolition of the County Courts, but still the condition obtains among us of certain of the judges of our smaller municipal courts being permitted—and in fact compelled—to practise in courts other than their own. This is not as it should be. A basal principle of our government is the distinctness and independence of its several

branches, and instances will readily suggest themselves in which practising attorneys representing a class of interests in one jurisdiction are called upon, as judges in their own courts, to pass upon cognate and directly related questions. The judgments of our courts should be placed above all risk of imputation of interest—otherwise the public becomes fretful and whispering begins.